

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BASILIO L. DAVILA	)	
	)	Civil Action
v.	)	
	)	No. 01-1986
MR. MASTER WARDEN, ET AL.	)	

**MEMORANDUM**

**Padova, J.**

**August 12, 2002**

Plaintiff Basilio L. Davila filed this action pro se pursuant to 42 U.S.C. § 1983, alleging constitutional violations relating to an altercation with another inmate on May 27, 2000. Following the disposition of various motions to dismiss, the following two claims remain in the case, both pursuant to the Eighth Amendment: (1) a claim of deliberate indifference to serious medical needs against Defendant Cheryl Boyd (L.P.N.); and (2) a claim of deliberate indifference to Plaintiff's safety against Defendants Mr. Master, Mr. Ovelman, Mr. Wright, Sgt. Mr. Bohn, Mr. Hawkins, Mr. Huch, Mr. Ortiz, Mr. Ingram, Mrs. Rose, and John Doe a/k/a Gooch ("Institutional Defendants") for housing him with a "dangerous" inmate.

Before the Court are the separate motions for summary judgment filed by Defendant Boyd and the Institutional Defendants. Plaintiff has not filed timely responses to the motions.<sup>1</sup> For the

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<sup>1</sup>The Court has thoroughly examined Plaintiff's deposition, however, which was filed with the Court in its entirety.

reasons that follow, the Court grants both motions and enters judgment in favor of all the Defendants and against Plaintiff on the two Eighth Amendment claims.

## **I. Legal Standard**

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). An issue is "genuine" if the evidence is such that a reasonable jury could return a verdict for the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A factual dispute is "material" if it might affect the outcome of the case under governing law. Id.

A party seeking summary judgment always bears the initial responsibility for informing the district court of the basis for its motion and identifying those portions of the record that it believes demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). Where the non-moving party bears the burden of proof on a particular issue at trial, the movant's initial Celotex burden can be met simply by "pointing out to the district court that there is an absence of evidence to support the non-moving party's case." Id. at 325. After the moving party has met its initial burden, "the

adverse party's response, by affidavits or otherwise as provided in this rule, must set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e). That is, summary judgment is appropriate if the non-moving party fails to rebut by making a factual showing "sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Celotex, 477 U.S. at 322. Under Rule 56, the Court must view the evidence presented on the motion in the light most favorable to the opposing party. Anderson, 477 U.S. at 255. "[I]f the opponent [of summary judgment] has exceeded the 'mere scintilla' [of evidence] threshold and has offered a genuine issue of material fact, then the court cannot credit the movant's version of events against the opponent, even if the quantity of the movant's evidence far outweighs that of its opponent. Big Apple BMW, Inc. v. BMW of North America, Inc., 974 F.2d 1358, 1363 (3d Cir. 1992).

## **II. Discussion**

Section 1983 provides a remedy against "any person" who, under the color of law, deprives another of his constitutional rights. 42 U.S.C. § 1983 (1994). To establish a claim under § 1983, a plaintiff must set forth: (1) a deprivation of a federally protected right, and (2) commission of the deprivation by one acting under color of state law. Lake v. Arnold, 112 F.3d 682, 689 (3d Cir. 1997). It is well settled that prison officials acting in

their official capacity act under color of state law. See Albrecht v. Lehman, No. CIV. A. 93-0318, 1993 WL 346216, at \*2 (E.D. Pa. Sept. 1, 1993). Defendants move for summary judgment on the grounds that there is no evidence to prove that Defendants caused a deprivation of federal protected rights as alleged by Plaintiff.

A. Deliberate Indifference to Serious Medical Needs

Plaintiff's first claim is brought against Cheryl Boyd, a nurse working at the Chester County Prison on May 27, 2000 where the altercation with another inmate took place. In his Amended Complaint, Plaintiff alleges that he sustained serious life-long injury as the result of "improper medical treatment afforded plaintiff in the care of defendant Cheryl Boyd, on the day of the incident, resulting into plaintiff injuries." (Am. Compl. ¶ 2.) He alleges that shortly following the altercation, he was seen by nurse Boyd in the hallway outside the medical department, and that after examining him, she said that he "just have [sic] a nose bleed, and it's normal for blood to come from the ear when struck with a hard blow in the nose" and that he would "be alright, you can take him back." (Am. Compl. ¶ 4.)

The Eighth Amendment prohibits "cruel and unusual" punishment. U.S. Const. amend. VIII. What constitutes cruel and unusual punishment is measured by "the evolving standards of decency that mark the progress of a maturing society." Id. at 426 (quoting Rhodes v. Chapman, 452 U.S. 337, 346 (1981)). The Eighth Amendment

is violated only where an inmate is deprived of "the minimal civilized measure of life's necessities." Id. (quoting Rhodes, 452 U.S. at 347). In order for a plaintiff to show that his medical treatment during incarceration violated his Eighth Amendment rights, he must present "facts or omissions sufficiently harmful to evidence deliberate indifference to [his] serious medical needs." Estelle v. Gamble, 429 U.S. 97, 106 (1976). Thus, the plaintiff must prove both deliberate indifference on the part of prison officials and the existence of a serious medical need. West v. Keve, 571 F.2d 158, 161 (3rd Cir. 1978).

Assuming that Plaintiff has actually suffered a serious medical condition sufficient for purposes of a deliberate indifference claim,<sup>2</sup> the summary judgment record lacks any evidence tending to show that Nurse Boyd was deliberately indifferent to his serious medical needs. Deliberate indifference is subjective recklessness, or a conscious disregard of a substantial risk of

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<sup>2</sup>To be deemed serious, the plaintiff's medical need must be "one that has been diagnosed by a physician as requiring treatment or one that is so obvious that a lay person could easily recognize the necessity for a doctor's attention." Monmouth County Correctional Inst. Inmates v. Lanzaro, 834 F.2d 326, 347 (3rd Cir. 1987). Alternatively, a medical condition may be considered serious when the delay or denial of treatment causes the inmate to suffer a life-long handicap or permanent loss. Id. The Court has previously determined that, liberally construed, the injuries alleged by Plaintiff present medical conditions that are serious enough for Eighth Amendment purposes. (Ord.-Mem. Aug. 13, 2001, at 5.) In light of the Court's determination that there is no evidence to support Plaintiff's claim that Boyd was deliberately indifferent, the Court need not determine whether the evidence supports Plaintiff's allegations of injury.

serious harm. Farmer v. Brennan, 511 U.S. 825, 839 (1994). To be actionable, the prison official must have known of and disregarded an excessive risk to the inmate's health or safety. Id. "[T]he official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference." Id.

In this case, there is no evidence that would support that Nurse Boyd ignored Plaintiff's medical needs. Plaintiff testified in his deposition that shortly following the altercation with the other inmate, he saw Nurse Boyd in the hallway. (Davila Dep. at 140-144, 150, 152.) He testified she was polite, courteous, and professional. (Id. at 150, 152.) Based on his complaints, she examined his eyes, (id. at 155, 290), his nose (id. at 154, 156-58, 290), behind his ear, (id. at 52, 155, 158), and his back.<sup>3</sup> (Id. at 52, 152-53, 155, 158-59, 295-97.) Plaintiff admits that she did nothing wrong and tried to help him. (Id. at 167, 268-69.) He admits that she did not hurt him. (Id. at 284.) He also admits that she told him that it was normal for his nose to bleed if struck as such, and that it stopped bleeding once he was given ice. (Id. at 154, 156-58, 290.) Plaintiff admits that nothing that Nurse Boyd did, or the one- to two-day delay between the

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<sup>3</sup>Plaintiff had previously sustained injuries to his back as the result of the automobile accident on April 26, 2000. Plaintiff admits that he never told Nurse Boyd that he was experiencing any new pain or injuries to that area. (Id. at 52, 152-53, 155, 158-59, 295-97.)

altercation and actually seeing a doctor, affected his ability to recover from his injuries or his subsequent treatment. (Id. at 206, 241.)

Plaintiff complains, however, that he was not immediately taken to a doctor, and that photographs of his injuries were not immediately taken.<sup>4</sup> With respect to Nurse Boyd, he complains that she should have done more to "intervene" with the decisions by the staff not to take him to see a doctor and not to have him photographed. (Id. at 160-61.) However, Plaintiff admits that these were security decisions made by Sergeant Wright and that Nurse Boyd was not involved in making those decisions.<sup>5</sup> (Id. at 159-60, 163-65, 239-40, 266.) After being returned to his cell, Plaintiff was given ice. (Id. at 153-54, 167-68.) The following day, he filled out a sick call slip. (Def.'s Ex. 6 "sick call slip.")

The summary judgment record, including Plaintiff's own admissions through his deposition, reveal that there is no evidence supporting Plaintiff's deliberate indifference to serious medical

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<sup>4</sup>The fact that photographs were not immediately taken has no bearing on his actual medical treatment. However, even if such evidence could support his Eighth Amendment claim, the record shows that Nurse Boyd was not involved in the decision not to take photographs.

<sup>5</sup>According to Plaintiff, Sgt. Wright told him that he could not bring him to see a doctor at that time because the other inmate with whom he had the altercation was in the medical department. (Id. at 140-44.) Plaintiff acknowledged that the decision was made for security and safety reasons. (Id. at 159-60, 163-65, 266.)

needs claim. The summary judgment record lacks any evidence to support that Nurse Boyd would have known that he was suffering from serious medical needs, or that she did anything that ignored any of his medical needs. There is no genuine issue of material fact that she was not involved in various security decisions. Furthermore, the record demonstrates that even if she were somehow involved in any delays in medical treatment, that Plaintiff himself suffered no adverse consequences from such a delay. Accordingly, the Court grants summary judgment on the medical needs claim.

B. Deliberate Indifference to Plaintiff's Safety

Plaintiff's second claim is against the Institutional Defendants. He alleges that they were deliberately indifferent to his safety by housing him with the other inmate, in violation of the Eighth Amendment. See Farmer v. Brennan, 511 U.S. 825, 834 (1994). In order to establish such a claim, Plaintiff must prove that the prison officials ignored a substantial risk by housing the inmates together. See Faulcon v. City of Philadelphia, 18 F. Supp. 2d 537, 540 (E.D. Pa. 1998).

The summary judgment record reflects no evidence that any of the Defendant officials were "both . . . aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and [they] . . . dr[e]w the inference." Farmer, 511 U.S. at 837. Based on the Plaintiff's witness list (Defs.' Ex. A), his deposition testimony (Davila Dep., generally), and the



remainder of the summary judgment record, it is clear that there is no evidence that would tend to support his position that any of the Institutional Defendants knew or had reason to know that the other inmate was dangerous, and that they therefore ignored a substantial risk to his safety by housing them together. In the absence of any such evidence, summary judgment on the claim is appropriate. See Faulcon v. City of Philadelphia, 18 F. Supp. 2d at 541.

Accordingly, the Court grants summary judgment in favor of the Institutional Defendants and against Plaintiff on the second Eighth Amendment claim.

An appropriate Order follows.

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**ORDER**

**AND NOW**, this 12th day of August, 2002, upon consideration of the Motion for Summary Judgment of Defendant Cheryl Boyd, L.P.N. (Doc. No. 67) and the Motion for Summary Judgment of Defendants Mr. Master, Mr. Ovelman, Mr. Wright, Sgt. Mr. Bohn, Mr. Hawkins, Mr. Huch, Mr. Ortiz, Mr. Ingram, Mrs. Rose, and John Doe a/k/a Gooch ("Institutional Defendants") (Doc. No. 68), Plaintiff's deposition, the remainder of the summary judgment record, and any responses thereto, **IT IS HEREBY ORDERED** that said Motions are **GRANTED**. **JUDGMENT** is entered in favor of all Defendants and against Plaintiff. All future scheduled proceedings in this matter are cancelled. The Clerk of Court shall close this case for statistical purposes.

BY THE COURT:

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John R. Padova, J.